

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**REALTIME DATA, LLC D/B/A IXO,**

**Plaintiff**

**vs.**

**PACKETEER, INC., et al.**

**Defendants.**

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**NO. 6:08-cv-00144-LED**

**DEFENDANT AVERITT EXPRESS, INC.'S MOTION FOR SUMMARY JUDGMENT  
OF NON-INFRINGEMENT**

**I. INTRODUCTION**

Defendant Averitt Express, Inc. ("Averitt") seeks summary judgment of non-infringement with respect to any patents asserted by plaintiff in this case.

**II. ISSUE TO BE DECIDED**

Whether all claims against Averitt Express should be dismissed with prejudice where there are no outstanding infringement contentions against Averitt.

**III. DISCUSSION**

Summary judgment is warranted because plaintiff ("Realtime") has not set forth any basis for its claim of infringement against Averitt. Realtime's Final Infringement Contentions do not, for example, mention Averitt. Averitt was apparently sued because it purchased a product from defendant F5 Networks, Inc. ("F5"). That product was never asserted to infringe, however, in the Preliminary Infringement Contentions and, as mentioned above, Averitt is not even mentioned in Realtime's Final Infringement Contentions. Averitt has requested that Realtime dismiss Averitt, but has received no response and Realtime has not taken any action to effect such a dismissal. Accordingly, Averitt requests that the claims against it be dismissed with prejudice. Averitt

reserves the right to seek recovery of its attorneys' fees and costs for having to defend itself in an action where Realtime knew, or should have known, that it had no basis for any claim of infringement.

This motion is supported by the Declaration of Ramsey M. Al-Salam filed herewith.

#### **IV. CONCLUSION**

For the reasons set forth above, the Court should dismiss all claims against defendant Averitt Express, Inc. with prejudice.

Dated: August 10, 2009

Respectfully submitted,

/s/ Ramsey M. Al-Salam

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ATTORNEYS FOR DEFENDANT F5  
NETWORKS, INC.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document on August 10, 2009. Any other counsel of record will be served by First Class U.S. mail on this same date.

/s/ Ramsey M. Al-Salam

Ramsey M. Al-Salam